

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
333 Queen Street  
Honolulu, Hawaii 96813

July 22, 2009

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI

REQUEST FOR A PETITION TO ADOPT AND AMEND  
HAWAII ADMINISTRATIVE RULES BY THE HULOPO'E  
BEACH PARK COUNCIL, MANELE, LANAI.

**STATUTE:**

Section 91-6, Hawaii Revised Statutes

**PURPOSE:**

The Hulopo'e Beach Park Council has requested that Section 13-231-61, Hawaii Administrative Rules (HAR), be amended and a new Section, 13-231-78 HAR, be added concerning the reissuance of commercial use permits for the Manele small boat harbor and the use of Hulopo'e Beach and Beach Park ( See Exhibit A).

**REMARKS:**

The Hulopo'e Beach Park Council states in their petition that the Manele small boat harbor is frequently over run by commercial vessel operators and their passengers resulting in the overuse and abuse of the harbor and as a direct result abuse of the adjacent beach and beach park. The Division of Boating and Ocean Recreation disagrees with this statement and notes that approximately thirteen million dollars in harbor improvements were recently completed to support the ferry and commercial operations at the Manele small boat harbor. Phase 1 included land side improvements which consisted of a new ferry terminal, restroom facilities, expansion of vehicle parking, and utility upgrades. Phase 2 will include the build-out of a new loading dock that will accommodate multiple vessels. Currently, there are two commercial permits issued to vessels assigned permanent mooring in the harbor, three commercial vessel permits are issued for the use of the launch ramp, and eight vessel moored elsewhere permits are issued to commercial vessels utilizing the harbor for commercial purposes. The harbor is more than capable of handling this number of commercial vessels.

DOBOR's jurisdiction encompasses the small boat harbor facilities statewide and marine activities taking place on State waters. DOBOR does not regulate the activities of individuals once they have left the facility. Hulopo'e beach is a public

beach and the Hulopo'e beach park is owned by Castle and Cooke. Individuals utilizing Hulopo'e beach access the area through a public right-of-way. The beach is open to the public and Castle and Cooke is responsible for managing their private property. DOBOR should not be responsible for regulating the public beach nor private property.

DOBOR also disagrees with the amendment to the requirements for the issuance of commercial permits. The existing rules are adequate and DOBOR does have the authority to not issue or reissue a commercial permit based on the type of activity or whether the operator failed to comply with Federal, State, or County regulations. Also, requiring the community to provide comment before the issuance or reissuance of a commercial permit will make the process subjective and cumbersome.

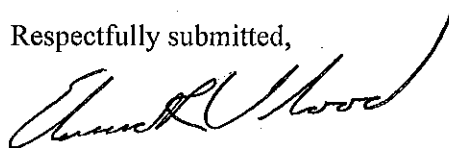
DOBOR does understand the community's frustration with the amount of people visiting the Hulopo'e beach on a daily basis. The Hulopo'e beach is the only beach where Lanai residents can take their families to recreate safely. In order to help address the overcrowding issue, DOBOR would support limiting commercial operations to weekdays with no commercial vessel activity allowed on weekends. This is one recommendation and we note that any proposed amendment to the HAR should address the use of the small boat harbor and not include conditions requiring DOBOR to manage public and private property.

**RECOMMENDATIONS:**

That the Board:

1. Deny the petition of the Hulopo'e Beach Park Council to amend the Hawaii Administrative Rules by revising Section 13-231-61 and adding a new Section 13-231-78.

Respectfully submitted,



Edward R. Underwood  
Administrator

**APPROVED FOR SUBMITTAL**



Laura H. Thielen  
Chairperson and Member

44883

*Castle & Cooke*  
*Hawaii*

RECEIVED

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June 24, 2009

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

Ms. Laura H. Thielen, Chairperson  
Board of Land & Natural Resources  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809

Re: Hulopoe Beach Park Council – Petition for Amendment of Chapter 13-  
231, Hawaii Administrative Rules

Dear Ms. Thielen:

In accordance with Section 13-1-26 of the Hawaii Administrative Rules (HAR), please find enclosed the original and seven (7) copies of the Hulopoe Beach Park Council's "Petition for Adoption, Amendment, or Repeal of Rules", dated June 23, 2009, seeking certain amendments to HAR Chapter 13-231 relating to the reissuance of commercial boating permits and the Manele Small Boat Harbor on the island of Lanai.

It is requested that all correspondence and notices relative to this Petition be directed to:

Mr. Gerry Rabaino, Chairperson  
Hulopoe Beach Park Council  
P.O. Box 631313  
Lanai City, Hawaii 96763

With a copy to:

Gary M. Yokoyama, Esq.  
Castle & Cooke Hawaii  
P.O. Box 898900  
Mililani, Hawaii 96789-8900

Exhibit A

Ms. Laura H. Thielen  
June 24, 2009  
Page 2

Thank you for your cooperation and assistance. Should you have any questions, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gary M. Yokoyama', with a long horizontal line extending to the right.

Gary M. Yokoyama  
Vice President & Counsel  
Castle & Cooke Resorts, LLC

Encls.

cc: Mr. Gerry Rabaino, HBPC

**HULOPO'E BEACH PARK COUNCIL**  
ISLAND OF LANAI

June 23, 2009

Via Email & U.S. Mail  
**dlnr@hawaii.gov**

Ms. Laura H. Thielen, Chairperson  
Board of Land & Natural Resources  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809

**Petition For Adoption, Amendment, Or Repeal Of Rules**  
Chapter 13-231, Hawaii Administrative Rules  
Pertaining to Reissuance of Commercial Permits  
and Special Area Rules for Manele Small Boat Harbor

Dear Madam Chair and Members of the Board:

The Hulopoe Park Beach Council (HBPC) hereby petitions the Board to revise the rules for reissuance of commercial permits as those rules apply to the Manele Small Board Harbor. HBPC is a Lanai community organization representing residents and landowners which was established in 1987 through a series of legal agreements between the Lanai community, Maui County and Castle & Cooke.

As we understand the DLNR/DOBOR commercial permitting process, tour-related companies operate with a one-year commercial permit, and that they are granted an almost-automatic annual renewal based primarily on the level of their "gross receipts."

**The HBPC suggests that this annual renewal process should be based on a revised set of criteria that includes some level of community review and/or input.**

The recently renovated Manele Small Boat Harbor is frequently overrun by several tour boat operators and their passengers, e.g., Seabird Cruises, Inc., Alihilani Yacht Charters, Inc. and others, resulting in overuse and abuse of the Manele Small Boat Harbor, and as a direct result, abuse of the adjacent beach and beach park, Lana'i's only easily accessible, public facilities park.

The boats park in already-leased slips, including those of other permitted boating operations, resulting in the lessee often having to wait until the parked vessel moves out of our Harbor's finger pier or Expeditions' Loading dock and Trilogy's big dock; many use the leased space for over the 30 minutes allowable time.

We are aware that these commercial vessels may indeed park temporarily in a lessee's slip **IF** they have the permission of the Harbormaster. They in fact **DO NOT HAVE THAT PERMISSION**, have been so informed, and are therefore acting in violation of your current rules.

These vessels jeopardize public safety and violate long-standing traditional usages of the Manele Small Boat Harbor and the adjacent Hulopo'e Beach Park. They disembark their passengers at the Manele Small Boat Harbor, point the way for their passengers to Hulopo'e Park and have no further contact with any of the transported passengers until they re-embark for their return trip. Not only do these illegal activities have a detrimental impact on Hulopo'e Beach, Manele Small Boat Harbor, and the Beach Park facilities, they are also of great concern to residents of Lana'i who feel they are being driven away from the Harbor and the Beach by the large numbers of patrons transported to Lanai by these companies.

The Public Utilities Commission has examined the practices of these vessels, and has determined that they are in fact tour boats, thereby subjecting them to your jurisdiction.

Perhaps even more troubling -- and ultimately dangerous -- is the absence of any supervision of those passengers ferried to Lana'i by these companies. They are simply dropped off at the Small Boat Harbor, directed -- unescorted -- over private land, told to use the facilities of Castle and Cooke's park (without a required commercial use permit) and then swim and/or snorkel unsupervised in Hulopo'e Bay.

We strongly urge DOBOR and the DLNR to change its commercial permitting process as it impacts Lana'i, and in fact recommend that it follow our own (HBPC) commercial permitting process which allows for limited commercial use of the Beach Park for a small fee while restricting use of the park on weekends and holidays. Vessels should not be allowed to drop off passengers for unescorted and unsupervised use of Hulopoe Bay. Clearly, this commercial abuse of the Harbor and the Beach Park must be better regulated.

The Hulopoe Beach Park Council is therefore submitting the attached Proposed Rule Changes for the reissuance of commercial permits and suggesting a revised rule for the Special Area of Manele Small Boat Harbor.

Ms. Laura H. Thielen, Chairperson

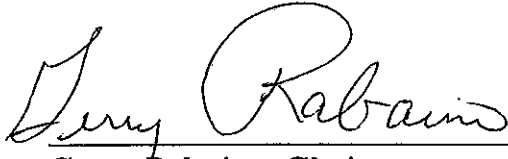
June 23, 2009

Page 3

Thank you for your attention and cooperation.

Sincerely,

**HULOPOE BEACH PARK COUNCIL**



Gerry Rabaino, Chairperson  
(ILWU Representative)



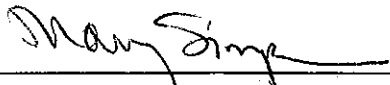
Ron McOmber, Member  
(Lanaians for Sensible Growth  
Representative)



Edward Linsley, Member  
Resort Manager  
Four Seasons Resorts Lanai  
(Castle & Cooke Representative)

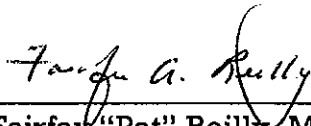


Leticia Castillo, Member  
(Community-at-Large Representative)



Mary Simpson, Member  
(Castle & Cooke Representative)

Robin Fancy, Member  
(Community-at-Large Representative)



Fairfax "Pat" Reilly, Member  
(Lanaians for Sensible Growth  
Representative)

cc: The Honorable Linda Lingle  
Gary M. Yokoyama, Castle & Cooke

Department of Land and Natural Resources  
Division of Boating and Recreation

Amendments

Amendments to Chapter 13-231  
Hawaii Administrative Rules

1. Chapter 13-231, Hawaii Administrative Rules, is amended by revising Section 13-231-61 to read as follows:

§13-231-61 Reissuance of commercial permits.

(a) The department may reissue a commercial permit provided that:

(1) The gross receipts during the twelve-month period under the commercial permit for which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:

\* \* \* \*

(2) The permittee applies to the department in writing for reissuance of the permittee's commercial permit and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel as prescribed in this subsection was due to:

\* \* \* \*

(3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(4) The permittee has operated the vessel named in the permit in material compliance with the provisions of this chapter, and the terms and conditions on which the expiring commercial permit was issued.

(b) The department shall notify the permittee in writing that an expiring commercial permit will not be reissued due to noncompliance with the provisions of this chapter or the terms and conditions on which it was issued. The notice shall be delivered not later than forty-five days prior to the date of expiration; provided, in the event a Disqualifying circumstance



or event occurs within forty-five days of expiration, the department shall provide the permittee with reasonable notice. The permittee may upon receipt of such notice request a contested case hearing in accordance with chapter 91, Hawaii Revised Statutes. The request for hearing shall be in writing and delivered no later than fourteen days following receipt of notice of nonrenewal. Upon receipt of a timely request for hearing, the department shall reissue the expiring permit on a month to month basis pending conclusion of the contested case hearing unless the grounds for nonrenewal involve an imminent threat to the health, safety and welfare of the public.

- (c) No commercial permit shall be reissued to any permittee whose commercial permit has been terminated or not reissued for cause, provided that the permittee may apply for a new commercial permit after one year has expired from the date of termination of the commercial permit, all fees and charges owing the State have been paid, and the permittee is in compliance with federal and state laws.
- (d) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve months in order to retain use permits upon the transfer of any interest in that corporation.

2. Chapter 13-231, Hawaii Administrative Rules, is amended by adding a new section 13-231-78 to read as follows:

[Subchapter 4 Special Area Rules]

"§13-231-78 Manele Small Boat Harbor.

- (a) The terms and conditions of a commercial permit authorizing use of Manele Small Boat Harbor issued in accordance with this chapter shall include the following:
- (1) Organized use of Hulopoe Beach or beach park by passengers disembarking the vessel named in this permit at Manele Harbor shall be in accordance with rules and regulations promulgated by the Hulopoe Beach Park Council. For the purposes of this chapter, "organized use" shall mean and include the overt promotion, advertising and sale of excursions to and activities involving Hulopoe Beach and beach park, whether communicated orally or through print or electronic media. The term includes the provision of water sports and other recreational equipment, instruction in their use, guidance for accessing the park, and picnic food and beverages for consumption within the park or on the beach.
  - (2) No commercial vessel moored elsewhere shall drop off passengers for unescorted and unsupervised access to Hulopoe Bay.
  - (3) The department shall publish a list of Manele Small Boat Harbor commercial permits for vessels moored elsewhere scheduled for issuance to incumbent permit holders thirty (30) days prior to the expiration date of the preceding permits in a newspaper of general circulation on the island of Lanai, with a copy to the Hulopoe Beach Park Council, inviting public comment on this list and the incumbent permit holders. Any request that a permit not be issued must be accompanied by factual supporting documentation showing the incumbent permittee's failure to meet permit issuance requirements of this chapter.
  - (4) This section shall not apply to water carriers regulated by the Public Utilities Commission under Chapter 271G, Hawaii Revised Statutes, as amended."